

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TRINIDAD RAMOS-GARCIA,

Movant,

-VS-

UNITED STATES OF AMERICA,

Respondent.

Nos. 2:08-CR-0024-RHW-1
2:09-CR-0011-WFN-1

**ORDER DENYING § 2255 MOTION/
REQUEST FOR APPOINTMENT OF
COUNSEL**

Before the Court is Mr. Ramos-Garcia's Motion Under § 2255. The Motion is submitted by Mr. Ramos-Garcia, who is appearing *pro se* in these proceedings. It is unclear whether Mr. Ramos-Garcia seeks to pursue a substantive § 2255 Motion or if he simply requests appointment of counsel, but as he has no basis under *Johnson* for a § 2255 Motion, either way the petition for relief should be denied.

Further, the Court recognizes that this Motion was filed in both of Mr. Ramos-Garcia's pending cases. The Honorable Judge Robert Whaley has asked this Court to issue an order in 2:08-CR-0024-RHW-1 because the Motion is similarly groundless in both cause numbers.

BACKGROUND

2:08-CR-0024-RHW-1. Mr. Ramos-Garcia was indicted on February 20, 2008 for being an alien in the United States after deportation. On April 9, 2008, he pled guilty and was sentenced to a time served sentence with one year of supervised release to follow. Following his conviction in 2:09-CR-0011-WFN, he was revoked for seven months, to be served consecutive to the sentence in the other case, to be followed by three years supervised release to be served concurrently.

2:09-CR-0011-WFN-1. Mr. Ramos-Garcia was indicted in on January 23, 2009. He was charged with possession with the intent to distribute 50 grams or more of actual

1 methamphetamine. He pled guilty and was sentenced on January 29, 2010 to the
2 mandatory minimum sentence of 120 months and five years supervised release.

3 **DISCUSSION**

4 The statute provides that only if the Motion, file and records "conclusively show
5 that the movant is entitled to no relief" may the Court summarily dismiss the Motion
6 without sending it to the United States Attorney for response. 28 U.S.C. § 2255(b). The
7 Rules regarding Section 2255 Proceedings similarly state that the Court may summarily
8 order dismissal of a 2255 motion without service upon the United States Attorney only "if
9 it plainly appears from the motion, and any attached exhibits, and the record of
10 prior proceedings that the movant is not entitled to relief, the judge must dismiss the
11 motion and direct the clerk to notify the moving party." Rule 4(a), RULES-SECTION 2255
12 PROCEEDINGS. Thus when a movant fails to state a claim upon which relief can be granted
13 or when the motion is incredible or patently frivolous, the district court may summarily
14 dismiss the motion. *Cf. United States v. Burrows*, 872 F.2d 915, 917 (9th Cir. 1989);
15 *Marrow v. United States*, 772 F.2d 525, 526 (9th Cir. 1985).

16 To gain relief, Mr. Ramos-Garcia must establish that (1) he is in custody under
17 a sentence of this federal court; (2) his request for relief was timely; and (3) the court
18 lacked either personal or subject matter jurisdiction, the conviction or sentence is
19 unconstitutional, the conviction or sentence violates federal law, or the sentence or
20 judgment is otherwise open to collateral attack. 28 U.S.C. § 2255. Mr. Ramos-Garcia
21 hopes to rely upon *Johnson* to invalidate the legality of his sentence. However, *Johnson*
22 pertains to firearm related offenses, specifically to application of the Armed Career
23 Criminal Act. *Johnson* is inapplicable to either of Mr. Ramos-Garcia's cases. To his
24 credit, there were no firearms involved in either of his offenses, nor was he considered a
25 career criminal.

26 **CERTIFICATE OF APPEALABILITY**

27 An appeal of this Order may not be taken unless this Court or a circuit justice issues
28 a certificate of appealability finding that "the applicant has made a substantial showing of

1 the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (West 2013). This requires a
2 showing that "reasonable jurists would find the district Court's assessment of the
3 constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
4 Based on the Court's preceding analysis, the Court concludes that jurists of reason would
5 not differ with the Court's conclusion. Thus a certificate of appealability should not issue.

6 The Court has reviewed the file and Movant's Motion and is fully informed.
7 Accordingly,

8 **IT IS ORDERED** that:

9 1. Mr. Ramos-Garcia's Motion Under 28 U.S.C. § 2255, filed June 6, 2016,

10 **2:08-CR-0024-RHW-1 ECF No. 55**, is **DENIED**.

11 2. Mr. Ramos-Garcia's Motion Under 28 U.S.C. § 2255, filed June 6, 2016,

12 **2:09-CR-0011-RHW-1 ECF No. 75**, is **DENIED**.

13 The District Court Executive is directed to:

14

- 15 • File this Order,
- 16 • Provide copies to counsel and *pro se* Movant
- 17 • Inform the Ninth Circuit Court of Appeals that if the Movant files a Notice of
Appeal that a certificate of appealability is **DENIED; AND**
- 18 • **CLOSE** the corresponding civil files, 2:16-CV-0195 and 2:16-CV-0196.

19 **DATED** this 14th day of June, 2016.

20

21 s/ Wm. Fremming Nielsen

22 WM. FREMMING NIELSEN

23 SENIOR UNITED STATES DISTRICT JUDGE

24 06-13-16

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